

MINUTES
IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND
PROGRAM

December 11, 2008

COMMISSIONER'S CONFERENCE ROOM
IOWA INSURANCE DIVISION, 330 EAST MAPLE STREET
DES MOINES, IOWA

James Holcomb, sitting in for Chairperson Susan Voss, called the Iowa UST Board meeting to order at 10:09 A.M. A quorum was present. The following Board members were present:

Doug Beech
Kyle Rice (for Michael Fitzgerald)
Tim Hall (for Richard Leopold)
Jeff Robinson
Nancy Lincoln (via telephone)
Susan Voss

Also present were:

Tim Benton, Attorney General's Office
Scott Scheidel, Program Administrator
James Gastineau, Program Administrator's Office
Lacey Skalicky, Program Administrator's Office
Elaine Douskey, Iowa Department of Natural Resources

APPROVAL OF PRIOR BOARD MINUTES

The minutes from the October 23, 2008 Board meeting were reviewed. Mr. Beech moved to approve the minutes, and Mr. Rice seconded the motion, and by a vote of 4-0, the minutes were approved.

CLOSED SESSION

Mr. Holcomb noted there were no matters dealing with litigation for discussion in closed session pursuant to Iowa Code Chapter 21. No closed session convened.

PUBLIC COMMENT

There were no public comments from anyone present.

BOARD ISSUES

A. Plume Study 28E Agreement

Mr. Scheidel stated that the Board that it had previously approved the 28E agreement with the Department of Natural Resources (DNR) to jointly complete a plume study with regard to the effects from proximal water supply well receptors. He explained that the Environmental Protection Commission (EPC) had requested the agreement be modified under the administration section to state that the “agreement shall be jointly administered” by the Board and the DNR director, as was stated similarly in the no further action (NFA) 28E agreement, also approved by the EPC. Therefore, the Board would have to again vote to approve the amended 28E agreement. He reminded the Board that the plume study agreement had come about in lieu of the additional items DNR had included in its proposed risk based corrective action (RBCA) model rule based on recalibration of the RBCA software, and the DNR had removed the additional items from the rule presented to the Administrative Rules Review Committee.

Mr. Beech submitted a motion to approve the amended 28E agreement for the plume study, and Mr. Hall seconded the motion, which was approved by a vote of 4-0.

Nancy Lincoln joined the meeting by teleconference.

B. DNR FY09 Funding 28E Agreement

Mr. Scheidel next presented the Board with a 28E agreement between the Board and the DNR to address the funding shortfalls in the DNR’s budget for fiscal year 2009. He explained that the agreement was unchanged since the last meeting, and the agreement was also approved by the EPC.

Mr. Scheidel referenced the Des Moines Register article that tried to paint a picture tying the Iowa UST funding of DNR to the change in DNR’s proposed RBCA rule, although the Iowa UST Fund had supplied DNR with additional shortfall funding for the past several years via similar 28E agreements. He explained that public comment at the following EPC meeting had included statements which echoed the article from a representative of the Sierra Club but were based entirely on the article itself. Other public comment was issued by a representative of the public water supply community, who stated the results of Iowa UST Fund and DNR negotiations were a positive for the protection of water supply, in contradiction to the articles intimations. Mr. Scheidel pointed out that the water supply representative’s comments were omitted from the follow up article in the Des Moines Register after the EPC meeting.

A motion to approve the 28E for fiscal year 2009 funding of the UST Section of DNR was submitted by Mr. Rice and seconded by Ms. Lincoln. Approved 5-0.

C. DNR Update

Ms. Douskey stated that DNR had presented three 28E agreements to the EPC, including the fiscal year 2009 funding agreement, the NFA agreement, and the plume study agreement – with

the amendment previously discussed, and all were approved by the EPC. In addition, she explained the RBCA rule brought before the committee was modified so that all items that would have involved the owner/operator's responsibility to conduct a professional assessment of the public water supply were removed. Also, included was a paragraph that did provide for owner/operator action at sites that would not have public water supply receptors otherwise addressed by either the plume study agreement or the NFA agreement with the Iowa UST Fund Board. She noted the rule was approved by the EPC with a minor change in language, and a public hearing was scheduled for January 6, 2009 at the Wallace Building for comment on the rule.

Also, Ms. Douskey stated the DNR had been working on rule changes to Chapter 134 (IAC 567) regarding underground storage tank professionals, including UST testers, liners, installers and inspectors to update applications and education requirements. The DNR has planned to present its rule change to the EPC in January as an informational item. Next, she reported that the United States Environmental Protection Agency (USEPA) representatives had notified the DNR that inspectors would be in Iowa in the spring to perform an audit of Iowa's third party inspection program by reviewing inspections of approximately 40-50 UST sites.

Mr. Beech asked Ms. Douskey about the DNR's discussion of a legislative package to request a change in the allocation of tank tag fees. Ms. Douskey explained that she believed that plan would go forward, although she had no direct involvement in the decision-making.

PROGRAM BILLINGS

Mr. Scheidel presented the current monthly billings to the Board for approval.

1. Aon Risk Services.....\$122,726.00
Consulting Services – December 2008 (\$57,513.00)
Claims Processing Services – December 2008 (\$55,213.00)
2. Attorney General's Office.....\$8,411.28
Services provided for October 2008
3. Attorney General's Office.....\$8,211.25
Services provided for November 2008

No additional billings for outside cost recovery counsel were presented by the Attorney General's office for this meeting. On a motion by Mr. Beech and a second by Mr. Hall, all billings were approved by a vote of 5-0.

MONTHLY ACTIVITY REPORT

Mr. Scheidel noted that the October and November activity reports and financials were provided for the Board members to review. He reported that he had had recent discussions with representatives from USEPA, and he was made aware that federal authorities were keeping track of the UST Funds in all states to see if any would be raided by their respective legislatures. He

also stated that the Iowa UST Fund and the DNR had combined data to identify LUST sites that were stagnant to evaluate how to move them forward. He made note that there were 4,100 LUST sites with closed claims that were classified as no action required (NAR), 567 with open claims that were classified as high risk, and 307 with open claims that were classified as low risk. In regard to recent financials, Mr. Scheidel reminded the Board it must decide when to transfer revenue into the Innocent Landowner Fund to reimburse monies previously diverted for the defeasance of bonds in June of 2008.

ATTORNEY GENERAL'S REPORT

Mr. Benton stated there was nothing to report from the Attorney General's Office.

CLAIM AUTHORITY

Mr. Gastineau presented the following claim authority requests:

1. Site Registration 9117224 – Jo-Ro Enterprises, Ltd., St Marys

This was the second Board report for a site that was previously classified low risk; however in 2008 the contaminant levels increased with one monitoring well measuring just above site specific target levels (SSTL's) for groundwater ingestion and groundwater vapor. The increase might have been the result of a high water table or might indicate a subsequent release from this active station. Previous authority to \$200,000 had been granted, and \$177,515.93 was incurred to date. Additional authority to \$230,000 was requested for an additional site monitoring report (SMR), a possible corrective action design report (CADR), and implementation of the CADR.

A motion to approve the claim authority was submitted by Mr. Hall and seconded by Ms. Lincoln. Approved 5-0.

2. Site Registration 8607868 – Marshalltown Community School, Marshalltown

This site was classified high risk for a non-residential basement and low risk for groundwater and soil vapor to the potential enclosed space pathways. Vapor sampling had failed to clear the site. The DNR accepted a high risk monitoring approach. Previous authority to \$75,000 had been granted, and \$84,787.73 was incurred to date. Additional authority to \$130,000 was requested for a SMR and monitoring well closure.

Susan Voss joined the meeting.

Mr. Rice submitted a motion to approve the claim authority, and Mr. Hall seconded the motion. Approved 5-0.

3. Site Registration 8604198 – K&K Phillips 66 Service, Anthon

This site was classified no action required (NAR) with free product. No free product had been observed in the last twelve months. High water levels might have masked the free product

levels. DNR required twelve more months of free product testing at minimum. Previous authority to \$75,000 had been granted, and \$86,338.91 was incurred to date. Additional authority to \$110,000 was requested for free product recovery (FPR).

Mr. Holcomb submitted a motion to approve the claim authority, and Mr. Beech seconded the motion. Approved 6-0.

CONTRACTS ENTERED INTO SINCE THE OCTOBER 23, 2008 BOARD MEETING

Mr. Scheidel noted that the Board had entered into one contract addendum with Seneca Environmental Services for the Conesville CRP for one more year. Also, he noted that even though it wasn't listed in the Board packets, the Board had executed the No Further Action (NFA) 28E agreement with the DNR within the past week.

OTHER ISSUES

Mr. Scheidel explained to the Board that even though the recent articles from the Des Moines Register had shone an inaccurate light on the relationship between the Board and the DNR, he said that he had been quick to discuss the shortcomings of the article with each Board member as soon as the article was published.

Also, Mr. Scheidel reported the next Board meeting was scheduled for Friday, January 23, 2009.

CORRESPONDENCE AND ATTACHMENTS

Ms. Voss asked if there was any further business, and there being none, Mr. Holcomb moved to adjourn, and Mr. Beech seconded the motion. By a vote of 6-0, the Board adjourned at 10:37 A.M.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott M. Scheidel". The signature is stylized with a large, looped 'S' and a cursive 'M'.

Scott M. Scheidel
Administrator